

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

KEISHNA BUNN,

Plaintiff,

v.

NANCY A. BERRYHILL,

Defendant.

Case No. 3:18-cv-00384-LB

**ORDER GRANTING THE
PLAINTIFF'S COUNSEL'S MOTION
FOR ATTORNEY'S FEES**

Re: ECF No. 36

INTRODUCTION

The court previously granted the plaintiff's motion for summary judgment and remanded the action to the Social Security Administration for further proceedings.¹ On remand, the plaintiff received a past-due benefits award.² Her counsel now seeks fees of \$17,987.46, which is within the 25-percent limit in 42 U.S.C. § 406(b) and the representation agreement with his client.³ The court can decide this matter without oral argument. *See* Civil L.R. 7-1(b). The court grants the motion.⁴

¹ *See* Order – ECF No. 31. Citations refer to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of documents.

² Notice of Award – ECF No. 36-3 at 1–3.

³ Motion for Attorney's Fees – ECF No. 36.

⁴ The court declines the plaintiff's counsel's request to apply a 4.08 multiplier. *See id.* at 4–6.

1 **STATEMENT**

2 The Commissioner awarded the plaintiff \$72,632.56.⁵ The court previously awarded \$3,949.80
3 in attorney's fees under the Equal Access to Justice Act ("EAJA").⁶

4 The plaintiff has a fee agreement with her lawyer that provides for a 25-percent contingency
5 fee of the award as of the final decision, which makes \$71,949.84 the relevant amount.⁷ The
6 plaintiff's attorney seeks \$17,987.46 in fees, which is within 25 percent of \$71,949.84. The
7 Commissioner filed a response to the plaintiff's motion asking the court to consider the
8 reasonableness of the fee award (including the plaintiffs' counsel's multiple requests for
9 extensions) and order the plaintiff's counsel to refund the EAJA fees to the plaintiff.⁸ The
10 plaintiff's counsel agreed that he will refund the EAJA fees and send \$500.00 to "acknowledge the
11 multiple extensions."⁹

12 **ANALYSIS**

13 Under 42 U.S.C. § 406(b), "[w]henver a court renders a judgment favorable to a [social
14 security] claimant . . . , the court may determine and allow as part of its judgment a reasonable
15 fee" for the claimant's counsel, which can be no more than 25 percent of the total of past-due
16 benefits awarded to the claimant. 42 U.S.C. § 406(b)(1)(A). A court may award such a fee even if
17 the court's judgment did not immediately result in an award of past-due benefits; where the court
18 has rendered a judgment favorable to a claimant by reversing an earlier determination by an ALJ
19 and remanding for further consideration, the court may calculate the 25-percent fee based upon
20 any past-due benefits awarded on remand. *See, e.g., Crawford v. Astrue*, 586 F.3d 1142 (9th Cir.
21 2009) (en banc).

22 In considering a motion for attorney's fees under § 406(b), the court must review counsel's
23 request "as an independent check" to ensure that the contingency fee agreement "yield[s]
24

25 ⁵ Notice of Award – ECF No. 36-3 at 2–3.

26 ⁶ Order – ECF No. 35.

27 ⁷ Fee Agreement – ECF No. 34-1 at 1.

28 ⁸ Commissioner's Response to Motion – ECF No. 37 at 7, 9–12.

⁹ Motion for Attorney's Fees – ECF No. 36 at 4.

reasonable results.” *See Gisbrecht v. Barnhart*, 535 U.S. 789, 807 (2002). Section 406(b) “does not displace contingent-fee agreements within the statutory ceiling; instead, § 406(b) instructs courts to review for reasonableness fees yielded by those agreements.” *Id.* at 808–09. To evaluate the reasonableness of a fee request under § 406(b), the court considers the character of the representation and the results achieved. *Id.* at 808; *see also Crawford*, 586 F.3d at 1151. This includes analyzing whether substandard representation justifies awarding less than 25 percent in fees; any delay in the proceedings attributable to the attorney requesting the fee; whether the benefits of the representation are out of proportion to time spent on the case; and the risk counsel assumed by accepting the case. *See Crawford*, 586 F.3d at 1151–52 (citing *Gisbrecht*, 535 U.S. at 808). If an attorney “is responsible for delay. . . a reduction [of fees] is in order so that the attorney will not profit from the accumulation of benefits during the pendency of the case in court.” *Gisbrecht*, 535 U.S. at 808 (cleaned up); *see also Crawford*, 586 F.3d at 1151.

The court must offset an award of § 406(b) attorney’s fees by any award of fees granted under the EAJA. *Gisbrecht*, 535 U.S. at 796; *Parrish v. Comm’r of Soc. Sec.*, 698 F.3d 1215, 1218 (9th Cir. 2012).

The 25-percent contingency-fee agreement is within § 406(b)(1)(A)’s ceiling, and the amount is reasonable. Furthermore, the court finds that the reduction in plaintiff’s counsel’s fee request by \$500.00 (rounded up from \$449.68) is appropriate.

CONCLUSION

The court finds that a fee award of \$17,987.46 is reasonable under § 406(b). The plaintiff’s counsel must refund the plaintiff the EAJA fees and the \$500.00, which results in a net (remaining) fee award of \$13,537.66.

IT IS SO ORDERED.

Dated: October 8, 2020



LAUREL BEELER
United States Magistrate Judge